
(2008) 10 SC CK 0118

In the Supreme Court Of India

Case No : Civil Appeal No. 6158 of 2008 (Arising out of SLP (C) No. 13164 of 2006)

Dipitimayee Parida

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Constitution of India, 1950 — Article 162

Citation : AIR 2009 SC 935 : (2009) 6 ALT 6 : (2008) 119 FLR 799 : (2008) 11 JT 430 : (2008) 13 SCALE 677 : (2008) 10 SCC 687 : (2009) 1 SCC(L&S) 50 : (2009) 2 SLJ 211 : (2009) 1 SLR 181

Hon'ble Judges : S. B. Sinha, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : Anukul Chandra Pradhan and Shiv Sagar Tiwari, for the Appellant; Shibashish Misra, Manoj Kumar Das and Sibho Sankar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—Leave granted.

2. Appellant is before us aggrieved by and dissatisfied with the judgment and order dated 10.4.2006 passed by a Division bench of the High Court of Orissa at Cuttack dismissing an appeal against the judgment and order dated 30.3.2005 passed by a learned single judge of the said Court in Writ Petition (C) No. 1952 of 2003 allowing the writ application filed by respondent No. 5 herein.

3. The State of Orissa in terms of the Integrated Child Development Scheme of the Central Government issued an advertisement for appointment of Anganwadi Workers. A check list laying down guidelines for selection of Anganwadi Workers was also issued. The Constitution of the Committee as also the marks to be allotted on different items were specified therein. A Circular Letter dated 7.10.1998 was furthermore issued by the W.E.C.D. Department of Government of Orissa for selection of Anganwadi Workers laying down minimum educational qualifications and as also other criteria there for; the relevant clause whereof

reads as under:

8) Candidates who have been included in the panel mentioned above, will be called for an interview and marks will be awarded to them in the following manner:

- a) Percentage of marks obtained in that Matriculation examination or percentage of marks obtained in the written test for non-matriculates as may be relevant.
- b) 3 marks if the candidate is intermediate or equivalent or has higher qualification.
- c) 5 marks if the candidate belongs to S.C. and S.T. category.
- d) 3 marks if she is married and additional 3 marks if she is a widow or a divorcee (i.e. where marriage has been dissolved by a court decree) provided she resides in that village.
- e) Marks to be awarded for experience out of a maximum of 5. The experience relevant for this purpose will be experiences in any area of the duties of Anganwadi worker acquired in Government employment or in employment in a programme under a registered voluntary organization funded by the State/ Central Govt. for this purpose.
- f) Marks obtained in the interview which will be out of a maximum of 10 marks.

Note: Marks awarded to candidate in accordance with Clause (a) to (e) shall be notified prior to holding of interview.

Rule 10 provides for composition of Selection Committee. Different Selection Committees were constituted for rural and urban areas separately.

4. Appellant filed an application for recruitment as an Anganwadi Worker, the last date where for was 20.9.2000. Admittedly, at that time, she was not married. She was married in 2001. She secured 43% in HSC Examination + 3 marks in Intermediate and 9 marks in viva voce, totaling 55 marks. However, she was awarded 3 more marks on the ground that she got married although as noticed hereinbefore she on the last specified date for filing of the application was not married.

Respondent No. 5 also filed an application for her recruitment as Anganwadi Worker. She secured 49.8% marks in HSC examination, + 3 marks in Intermediate, + 3 marks for marriage, + 2 marks for viva-voce examination, thus, totaling 57.8% marks.

5. Contending that the Selection Committee had no jurisdiction to award 3 marks to appellant, respondent filed a writ petition before the High Court of Orissa. The said writ petition was allowed by a learned single judge of the said Court by a judgment and order dated 30.3.2005, opining:

A candidate who acquired the prescribed qualifications or extra qualification

subsequent to such prescribed date cannot be considered at all. Admittedly on the date of publication of the Notification and the date fixed for submission of application the petitioner was not married though she got married subsequently. The authorities awarded three marks in her favour. In view of the ratio of the Supreme Court judgment in the case of Ashok Kumar Sharma (supra), the petitioner is not entitled to the said three marks and only the eligibility and the qualifications possessed by the opposite party no. 5 on the date prescribed in the notification is to be taken into consideration. In view of the clear position of law, I find that the authorities acted illegally and with material irregularity in awarding extra three marks to the opposite party No. 5. If the aforesaid three marks were deducted from 58% then the opposite party No. 5 would secure 55% marks whereas the petitioner would secure 57.8% marks. This aspect was not kept in mind by the Collector. Therefore, I have no hesitation to set aside the order passed by the Collector and direct that the petitioner be engaged as an Anganwadi Worker in the centre in question, if there is no other impediment.

As indicated hereinbefore, on an intra court appeal preferred there against by the appellant, the Division Bench passed the impugned judgment dismissing the same.

6. Mr. Anukul Chandra Pradhan, learned Counsel appearing on behalf of appellant would submit that the question as to whether a woman is married or not although not wholly relevant, but being not an essential qualification for appointment as an Anganwadi Worker, the learned single judge as also the Division Bench of the High Court committed a serious error in passing the impugned judgments.

7. Mr. Shibashish Misra, learned Counsel appearing on behalf of the contesting respondent, on the other hand, would support the impugned judgment contending that the Selection Committee could not have granted three marks in favour of the appellant on the premise that she was married.

8. The matter relating to recruitment of Anganwadi Workers is not governed by any statute. Recruitments are made pursuant to a Scheme framed by the Central Government. The State, therefore, while making recruitments in such projects in exercise of its jurisdiction under Article 162 of the Constitution of India, may issue such guidelines and/or circulars as it may seem fit and proper.

The said guidelines are ordinarily binding on all the functionaries working in terms of the 'scheme' including the Selection Committees constituted for recruitment of Anganwadi worker.

9. We have noticed hereinbefore that a Circular Letter had been issued by the State Government on 7.10.1998; the validity whereof is not in question. The manner in which the marks are to be distributed has been laid down in Clause 8 of the said circular letter.

Sub-Clause (d) of Clause 8 of the said Circular postulates that three marks are to

be granted if the candidate is a married woman and additional three marks are to be granted if she is a widow or a divorcee.

As the Scheme deals with the welfare of the children, it is expected that a married woman would be able to deal with them more efficiently; widows and divorcees are granted additional marks in order to give incentive to them to work with the children.

Ten marks had been fixed for viva-voce test. The marks which have to be awarded in terms of Clause 8 (a) to (e) were to be notified prior to holding of interview.

The reason behind the same appears to be invoking the principle of transparency in the Selection Process. Thus, as in terms of Clause 8(a) to (e), appellant got 55% marks; the Selection Committee could not have awarded her three additional marks on the premise that she was married. Even before the interview such marks could not have been awarded as the authorities were not expected to be aware that she was married after filing of the application for recruitment. It may or may not be for appellant to bring the said subsequent event to the notice of the competent authority so as to enable them to consider that although on the last date for filing of the application she was not married but was married subsequently. We say so because in terms of the rules it was for the competent Committee to award marks in terms of Clause 8(a) to (e) of the said Circular Letter dated 7.10.1998. The Selection Committee could not have done so as it was merely authorized to hold the viva-voce test where for only 10 marks were specified.

10. We had adverted to this aspect of the matter so as to enable us to consider the submissions made by Mr. Pradhan that the criterion of one's marital status was not relevant. It is one thing to say that the criteria fixed by the State for the purpose of recruitment of Anganwadi Workers are illegal or ultra vires but it is another thing to say that although they are valid, in their application some relaxation could be granted. When marks are fixed specifying the criteria in the rule, the same should be strictly followed. The Selection Committee was not conferred with any power to grant relaxation. Stages for grant of marks having been fixed; one Committee could not usurp the jurisdiction of the other. If the contention of respondents is correct, then, for all intent and purport, the marks awarded by the Interviewing Committee to the appellant would be 12 out of 10, which was impermissible.

11. This Court in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, held:

...Appellant, however, has filed a writ application for issuance of or in the nature of a writ of mandamus. He, therefore, must establish existence of a legal right in himself and a corresponding legal duty in the State. If he did not possess the requisite qualification to hold a post, he could not have any legal right to continue. It was, therefore, immaterial as to why and when the said proceeding

had been initiated against him.

12. Even otherwise, ordinarily the qualification or extra-qualification laid down for the recruitment should be considered as on the last date for filing of the application. This has been so held in *Rekha Chaturvedi v. University of Rajasthan* and Ors. 1993 Supp. (3) SCC 168 stating:

The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed.

13. Yet again, in *Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another*, this Court held:

One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the person had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis.

See also *Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, Rajasthan Public Service Commission v. Kaila Kumar Paliwal and Anr.* (2007) 10 SCC 260 Para 20 and 21

14. In this view of the matter, we do not find any legal infirmity in the impugned judgment. The appeal is dismissed accordingly. There shall, however, be no order

as to costs.